

JUDGE ROBINSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07 CV

6846

JOSEPH LABICK,

x

:

(SCR)

ECF CASE

Plaintiff,

:

- against -

:

NOTICE OF REMOVAL

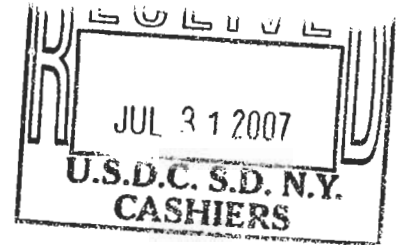
CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.,

:

:

Defendant.

x



**To the Honorable Judges of the United States District Court for the Southern
District of New York**

The Removing Party, Consolidated Edison Company of New York, Inc. ("Con Edison" or "Defendant"), by its attorney, Mary Schuette, respectfully states:

1. On or about June 28, 2007, an action was commenced in the City Court of Yonkers, State of New York, County of Westchester, entitled Joseph Labick, Plaintiff, against Consolidated Edison Company of New York, Inc., Defendant. A copy of the Summons, which constitutes the initial pleading in this case, is attached hereto as Exhibit A. Con Edison first received the Summons on July 2, 2007. The Summons indicates that Plaintiff's action asserts a single claim, for breach of contract, seeking judgment in the amount of \$1,327.44.

2. On or about July 2, 2007, Con Edison was informed by Plaintiff that his claim was for pension benefits under the terms of the Consolidated Edison Retirement Plan ("Plan"). The Plan is an employee pension benefit plan as that term is defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1002(2). In 2006, Plaintiff's monthly benefit under the Plan decreased by \$1,327.44, from \$5,203.37 to \$3,875.93, under the Level Income Option feature of the Plan, which Plaintiff had elected at the time he began

receiving his pension. Under this Option, Plaintiff initially received a higher temporary pension amount, which included an estimate of his Social Security benefit. Once he became eligible for Social Security benefits, his monthly pension benefit was permanently reduced. Copies of records concerning Plaintiff's pension are attached hereto as Exhibit B.

3. As an action for benefits under the terms of an ERISA plan, Plaintiff's action may be removed to this Court pursuant to 28 U.S.C. § 1441, in that the action arises under and is completely preempted by ERISA, 29 U.S.C. § 1132(a)(1)(B), and is an action over which this Court has original jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e).

4. By reason of the foregoing, this action may be removed from the City Court of Yonkers, State of New York, County of Westchester, to the United States District Court for the Southern District of New York.

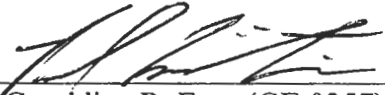
5. This notice is filed with this Court within 30 days after receipt by Con Edison of the initial pleading in this action, and within 30 days after receipt by Con Edison of information from which it first could be ascertained that the case is removable.

WHEREFORE, the Defendant requests that the action presently pending in the City Court of Yonkers of the State of New York, County of Westchester, be removed to this Court.

Dated: New York, New York
July 30, 2007

MARY SCHUETTE (MS 4752)
Attorney for Defendant
Consolidated Edison Company
of New York, Inc.
4 Irving Place, Room 1815-S
New York, NY 10003
212-460-2496

Of Counsel:

By: 
Geraldine R. Eure (GE 0357)
212-460-4285
Paul Limmiatis (PL 5521)
212-460-2571

TO: JOSEPH LABICK, Pro Se
49 Amackassin Terrace
Yonkers, NY 10703
(914) 963-3345

STATE OF NEW YORK: COUNTY OF WESTCHESTER
CITY COURT OF YONKERS
100 SOUTH BROADWAY
YONKERS, NEW YORK 10701

SMALL CLAIMS SUMMONS
TEL - 914-377-6378
INDEX: SC-2007-8313

DEFENDANT:

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.
511 THEODORE FREMD AVENUE
RYE, NY 10580

PLAINTIFF: JOSEPH LABICK

49 AMACKASSIN TERRACE
YONKERS, NY 10703

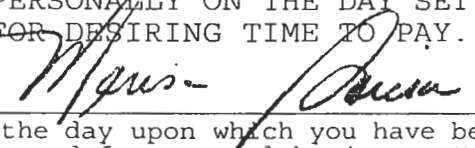
TAKE NOTICE the above plaintiff(s) seeks judgment in this Court against you for \$1327.44 together with costs, upon the following claim:

BREACH OF CONTRACT - 9/10/06

THERE WILL BE A HEARING before this Court upon this claim on October 1, 2007 at 01:00 PM in the Small Claims Part 5, held at the above address.

YOU MUST APPEAR and present your defense and any Counterclaim you may desire to assert at the Hearing at the time and place set forth above (a corporation must be represented by an attorney or any authorized officer, director or employee). IF YOU DO NOT APPEAR, JUDGMENT WILL BE ENTERED AGAINST YOU BY DEFAULT, EVEN THOUGH YOU MAY HAVE A VALID DEFENSE. If your defense or Counterclaim, if any, is supported by witnesses, account books, receipts, or other documents, you must produce them at the Hearing. The Clerk, if requested, will issue subpoenas for witnesses, without fee. IF YOU ADMIT THE CLAIM, BUT DESIRE TIME TO PAY, YOU MUST APPEAR PERSONALLY ON THE DAY SET FOR THE HEARING AND STATE TO THE COURT YOUR REASONS FOR DESIRING TIME TO PAY.

DATED: June 28, 2007

 Clerk
IF YOU DESIRE A JURY TRIAL, you must before the day upon which you have been notified to appear, file with the Clerk of the Court a written demand for a trial by jury. You must also pay to the Clerk a jury fee of \$70.00 and file an undertaking in the sum of \$50.00 or deposit such sum in cash to secure payment of any costs that may be awarded against you. You will also be required to make an affidavit specifying the issues of fact you desire to have tried by a jury, stating that such trial is desired and demanded in good faith. Under the law, the Court may award \$25.00 additional costs to the plaintiff(s) if a jury trial is demanded by you and a decision is rendered against you.

**** NOTE **** THE Court does not encourage adjournments. Only the Judge may grant an adjournment request. All requests MUST be in writing with notice to the other party and for good cause. If you do not receive notice of a new date you or someone on your behalf MUST appear in Court to explain to the Judge why you cannot be ready for trial.

A defendant if he wishes to file a counterclaim shall do so by filing with the clerk a statement containing such counterclaim within 5 days of receiving the notice of claim. At the time of such filing the defendant shall pay to the clerk a filing fee of \$5.41 which is required pursuant to this subdivision. The clerk shall forthwith send notice of the counterclaim by ordinary first class mail to the claimant. If the defendant fails to file the counterclaim in accordance with the provisions of this subdivision, the defendant retains the right to file the counterclaim, HOWEVER the claimant may, but shall not be required to, request and obtain an adjournment to a later date. The claimant may reply to the counterclaim, but shall not be required to do so.

!!!BRING THIS NOTICE WITH YOU AT ALL TIMES!!!

***** A COPY OF THE BOOKLET, "A GUIDE TO SMALL CLAIMS PART",
IS AVAILABLE AT ANY CITY COURT.**

Exhibit B

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IPRTERNL

RETIREE PAY HISTORY INQUIRY SYSTEM
E A R N I N G S

07/17/07

11:52:52

EMPL NO 95497

COMPANY NBR 207

PAY PERIOD 093006

NAME : LABICK

JOSEPH

LAST PAY GROUP : MM

RATE : 93,200.00

RET DT/STAT/DEATH DTE : 08-01-00 A

PAYEE ALSO IN :

PAY TYPE	SEQ	I.D.	DESCR	CURRENT	YTD	EFF DATE
CURR	001	853	100JSPEN	3,875.93	3,875.93	

T O T A L S 3,875.93

PF2=SRH PF3=MNU PF4=ERN PF5=DED PF6=TAX PF7=MSC PF8=REG PF9=NXT PF10=TOP

Page: 1 Document Name: untitled

IPRTERNL

RETIREE PAY HISTORY INQUIRY SYSTEM
E A R N I N G S

07/17/07

11:52:38

EMPL NO 95497

COMPANY NBR 207

PAY PERIOD 083106

NAME : LABICK

JOSEPH

LAST PAY GROUP : MM

RATE : 93,200.00

RET DT/STAT/DEATH DTE : 08-01-00 A

PAYEE ALSO IN :

PAY TYPE	SEQ	I.D.	DESCR	CURRENT	YTD	EFF DATE
CURR	001	553	100JSPEN	5,203.37	41,231.38	

T O T A L S 5,203.37

PF2=SRH PF3=MNU PF4=ERN PF5=DED PF6=TAX PF7=MSC PF8=REG PF9=NXT PF10=TOP